IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

S.B. Civil Revision Petition No.62/2006

Babloo Vs. Gulla Ram

Date of Judgment :: **17th May, 2007**

Hon'ble Dr. Vineet Kothari, J.

Mr.L.L. Gupta for the petitioner.
Mr.M.C. Jain for the respondents.

1. This revision petition is directed against the order dated 20.2.2006 whereby the trial court refused to verify the written compromise dated 16.12.2004 on the objections filed by the defendant on 20.2.2005 under Order 23 Rule 3 C.P.C. The plaintiff has, therefore, filed this revision petition challenging this order.

2. Mr. L.L. Gupta, learned counsel for the petitioner relying upon the judgments in **[1991 (1) CCC 600 (SC)] K. Venkata Seshiah Vs. Kenduru Ramasubbamma; [2001 (3) CCC 409 (HP)] Bhuvnesh Verma Vs. Kashmiri Lal** and also the following judgments of this Court given in **[RLR 1993 (1) 259] Hari Singh Vs. Ram Kumar and Others; [(2002)**

WLC(Raj.) UC 36] Mohd. Saied and Another Vs. Babu Lal and [RLW 1998 (2) Raj. 1077] M/s. Man Industrial Ltd. Corporation Vs. Rajasthan Financial Corporation, has submitted that the trial court was bound to verify the written compromise under Order 23 Rule 3 and could not have refused to do so. He submitted that though the written compromise was filed on 16.12.2004 and signature on the same is not denied by the defendant, Gulla Ram, merely because the written compromise was not verified on the very same day and the next day i.e. 20.2.2005 was fixed and on 20.2.2005, the defendant as an after thought filed an objection denying the said compromise, it did not prevent the trial court from still verifying the said compromise and decreeing the suit in terms of the said compromise, after deciding the objection.

3. Learned counsel for the respondent, Mr. M. C. Jain, on the other hand, submitted that the defendant could deny the compromise and he also submitted that the application filed on 20.2.2005 shows that the plaintiff had agreed to pay a sum of Rs.25,000/- to the defendant under an oral agreement as a term of the settlement between the parties, which he did not pay and

also because the disputed land of Khasra No.907 was in joint possession of defendant, Gulla Ram and one Samman Khan, therefore, he alone could not have entered into the compromise.

4. The application filed by the defendant, Gulla Ram, on the aforesaid ground of non-payment of Rs.25,000/- by the plaintiff under the oral agreement and that the land was in joint possession of himself and Samman Khan, appears to be an after thought and a futile effort to wriggle out of the written compromise entered into by him with the plaintiff on 16.12.2004. Order 22 Rule 3 C.P.C. provides that where the compromise is denied by one of the parties to the compromise, the Court shall decide the question but no adjournment shall be granted for the purpose of deciding the question. In the present case, instead of deciding the said objection, the trial court refused to verify the compromise and accepted the said objection as gospel truth without recording any reason in the impugned order and continued with the suit.

5. In view of the aforesaid legal position, as laid down in the cited case laws, this Court finds that the revision petition

deserves to be allowed and the impugned order dated 20.2.2006 also deserves to be set aside. The revision petition is, accordingly, allowed and the impugned order dated 20.2.2006 is, accordingly set aside and the trial court is directed to decide the application of the defendant dated 25.2.2005 in accordance with the proviso to Order 23 Rule 3 C.P.C. and if it comes to the conclusion that the application filed by the defendant is an after thought and misconceived, it may decree the suit in accordance with the compromise dated 16.12.2004. Both the parties are directed to appear before the trial court on 9.7.2007.

6. The revision petition is allowed as indicated above.

[**Dr. Vineet Kothari**],**J.**

S.S.
Jr.P.A.